

VERITAS SOFTWARE CORP /DE/

Form 425

May 03, 2005

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Filing pursuant to Rule 425 under the Securities Act of 1933, as amended, and deemed filed pursuant to Rule 14a-12 under the Securities Exchange Act of 1934, as amended

Filer: VERITAS Software Corporation  
Subject Company: VERITAS Software Corporation  
Commission File No. of Subject Company: 000-26247

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **May 3, 2005**

**VERITAS Software Corporation**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation)

000-26247  
(Commission  
File Number)

77-0507675  
(IRS Employer  
Identification No.)

350 Ellis Street, Mountain View, California  
(Address of principal executive offices)

94043  
(Zip Code)

Registrant's telephone number, including area code (650) 527-8000

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))



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Item 2.02. Results of Operations and Financial Condition

Item 9.01 Financial Statements and Exhibits

SIGNATURE

Exhibit Index

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**Table of Contents****Item 2.02. Results of Operations and Financial Condition**

On May 3, 2005, VERITAS Software Corporation (the Company) issued a press release announcing its financial results for the quarter ended March 31, 2005. A copy of the press release, dated as of May 3, 2005, entitled VERITAS Software Reports First Quarter Results, is furnished as Exhibit 99.01 to this Current Report and is incorporated herein by reference.

**Non-GAAP Financial Statements**

The Company intends to use certain non-GAAP financial measures in connection with the announcement of its financial results for the quarter ended March 31, 2005 that are not prepared in accordance with generally accepted accounting principles and may be different from non-GAAP financial measures used by other companies. Investors are encouraged to review the non-GAAP reconciliation table attached as Exhibit 99.02 to this Current Report and incorporated herein by reference, which describes the reasons why management believes the presentation of these non-GAAP financial measures provides useful information to investors and any additional purposes for which management uses these non-GAAP financial measures. The table also includes a reconciliation of these non-GAAP financial measures to their most directly comparable GAAP financial measures.

The information in this Current Report, including the exhibits hereto, shall not be deemed to be filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section or Sections 11 and 12(a)(2) of the Securities Act of 1933, as amended. The information contained herein and in the accompanying exhibits shall not be incorporated by reference into any registration statement or other document filed with the Securities and Exchange Commission by the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing, except as shall be expressly set forth by specific reference in such filing.

**Item 9.01 Financial Statements and Exhibits**

(c) Exhibits

**Exhibit****Number****Exhibit Title or Description**

99.01	Press release entitled VERITAS Software Reports First Quarter Results, dated May 3, 2005, announcing financial results of VERITAS Software Corporation for the quarter ended March 31, 2005.
99.02	Reconciliation of Condensed Consolidated Statements of Operations to Non-GAAP Statements of Operations for the quarters ended March 31, 2005 and March 31, 2004.

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

VERITAS Software Corporation

/s/ Edwin J. Gillis

Date: May 3, 2005

Edwin J. Gillis  
Executive Vice President and Chief Financial Officer

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**Exhibit  
Number**

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99.02	Reconciliation of Condensed Consolidated Statements of Operations to Non-GAAP Statements of Operations for the quarters ended March 31, 2005 and March 31, 2004.

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**Exhibit 99.01**

**NEWS**

VERITAS Software Corporation  
350 Ellis Street  
Mountain View, CA 94043  
(650) 527-8000

***For Immediate Release***

**VERITAS Software Reports First Quarter Results**

***Revenue of \$559 Million, 15% Growth Year-Over-Year***

**MOUNTAIN VIEW, Calif. May 3, 2005** VERITAS Software Corporation (NASDAQ: VRTS) today announced financial results for the quarter ended March 31, 2005. Revenue was \$559 million, compared to revenue of \$486 million for the same period a year ago, representing 15 percent growth year over year.

GAAP net income for the quarter ended March 31, 2005 was \$105 million, or \$0.24 per diluted share, compared to GAAP net income of \$100 million, or \$0.22 per diluted share, for the same period a year ago. Included in GAAP net income were non-cash charges of \$8.5 million, net of taxes, for the quarter ended March 31, 2005 related to amortization of intangibles, stock-based compensation and gains on strategic investments. Net income for the quarter ended March 31, 2005 also included approximately \$12 million of expenses related to our pending merger with Symantec Corporation. For the quarter ended March 31, 2004, GAAP net income included \$2.2 million, net of taxes, related to amortization of intangibles, in-process research and development, stock-based compensation and gains on strategic investments.

Our results this quarter demonstrate the overall strength of our business, a continuation of the momentum we built exiting the fourth quarter and our customers' confidence with our strategic direction, said Gary Bloom, chairman, president and CEO, VERITAS Software. License revenue was up seven percent and service revenue was up 29 percent year-over-year, driven by strength in our EMEA and Asia Pacific/Japan regions, which were up 48 percent and 28 percent, respectively.

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*VERITAS Software Reports First Quarter Results*

During the quarter, we generated a record \$257 million in cash from operating activities and we exited the quarter with \$2.4 billion in cash and short-term investments, after retiring \$381 million of debt during the quarter, said Ed Gillis, executive vice president and chief financial officer, VERITAS Software.

With the combination of our strong performance in Q1, the normal seasonality of the second quarter and the ongoing activities related to the pending merger with Symantec, we are being cautious with our outlook for the June quarter, said Bloom. As a result, our revenue expectations for the quarter ending June 30, 2005 are in the range of \$500 to \$540 million, and diluted earnings per share are in the range of \$0.15 to \$0.20 on a GAAP basis. In addition for calendar year 2005 we continue to expect an annual revenue growth rate of approximately 11% to 12%.

The expectations for GAAP diluted earnings per share for the June quarter include the impact of certain expenses related to the company's planned merger with Symantec, which are estimated to be approximately \$15 million.

The company will hold a conference call today at 2:00 p.m. Pacific Time, 5:00 p.m. Eastern Time, to review the results and business outlook. The conference call will be available to all investors. The telephone dial-in number for listen-only access to the live call is (719) 457-2692, passcode: 4554106. A live webcast will also be available at [www.veritas.com](http://www.veritas.com), Investor section. In addition, a replay will be available via audio webcast at [www.veritas.com](http://www.veritas.com), [Investor section](#), or via telephone at (719) 457-0820, replay code: 4554106 beginning on Tuesday, May 3rd at 4:00 p.m. Pacific Time until July 2005.

**About VERITAS Software**

VERITAS Software, one of the 10 largest software companies in the world, is a leading provider of software and services to enable utility computing. In a utility computing model, IT resources are aligned with business needs, and business applications are delivered with optimal performance and availability on top of shared computing infrastructure, minimizing hardware and labor costs. With 2004 revenue of \$2.04 billion, VERITAS delivers products and services for data protection, storage & server management, high availability and application performance management that are used by 99 percent of the Fortune 500. More information about VERITAS Software can be found at [www.veritas.com](http://www.veritas.com).

**Safe Harbor Statement**

This press release may include estimates and forward-looking statements within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934, including statements relating to projections of future revenue and earnings per share. These forward-looking statements involve a number of risks and uncertainties, including the risk that we will not gain market acceptance of our products and services; the risk that we will be unable to maintain the quality of our end-user customer and partnering relationships; the risk that our customers will reduce or defer purchases

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*VERITAS Software Reports First Quarter Results*

of our products and services due to economic or industry conditions, the impact of regulatory requirements or our pending merger with Symantec; the risk that we will not manage our business effectively; and the risk that our business may be negatively affected as a result of our pending merger with Symantec, that could cause the actual results we achieve to differ materially from such forward-looking statements. For more information regarding potential risks, see the *Factors That May Affect Future Results* section of our most recent report on Form 10-K for the year ended December 31, 2004 on file with the SEC. We undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date hereof.

**Additional Information and Where to Find It**

Symantec Corporation has filed a registration statement on Form S-4 containing a preliminary joint proxy statement/prospectus in connection with the proposed merger transaction involving Symantec and VERITAS. Investors and security holders are urged to read this filing (as well as the definitive joint proxy statement/prospectus when it becomes available) because it contains important information about the proposed merger. Investors and security holders may obtain free copies of this filing and other documents filed with the SEC at the SEC's web site at [www.sec.gov](http://www.sec.gov). In addition, investors and security holders may obtain free copies of documents filed with the SEC by Symantec by contacting Symantec Investor Relations at 408-517-8239. Investors and security holders may obtain free copies of the documents filed with the SEC by VERITAS by contacting VERITAS Investor Relations at 650-527-4523.

Symantec, VERITAS and their directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Symantec and VERITAS in connection with the proposed merger transaction. Information regarding the special interests of these directors and executive officers in the proposed merger transaction is included in the joint proxy statement/prospectus of Symantec and VERITAS described above. Additional information regarding the directors and executive officers of Symantec is also included in Symantec's proxy statement for its 2004 Annual Meeting of Stockholders, which was filed with the SEC on July 30, 2004. Additional information regarding the directors and executive officers of VERITAS is also included in VERITAS' annual report on Form 10-K for the year ended December 31, 2004. These documents are available free of charge at the SEC's web site at [www.sec.gov](http://www.sec.gov) and from Investor Relations at Symantec and VERITAS as described above.

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**VERITAS SOFTWARE CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share data)

	<b>Three Months Ended March 31,</b>	
	<b>2005</b>	<b>2004</b>
	<b>(Unaudited)</b>	
Net revenue:		
User license fees	\$ 323,242	\$ 302,409
Services	236,016	183,338
<b>Total net revenue</b>	<b>559,258</b>	<b>485,747</b>
Cost of revenue:		
User license fees	8,612	9,519
Services (1)	79,045	65,843
Amortization of developed technology	7,424	3,824
<b>Total cost of revenue</b>	<b>95,081</b>	<b>79,186</b>
<b>Gross profit</b>	<b>464,177</b>	<b>406,561</b>
Operating expenses:		
Selling and marketing (1)	165,652	143,038
Research and development (1)	97,510	79,924
General and administrative (1)	57,907	47,749
Amortization of other intangibles	2,430	2,394
In-process research and development		400
<b>Total operating expenses</b>	<b>323,499</b>	<b>273,505</b>
<b>Income from operations</b>	<b>140,678</b>	<b>133,056</b>
Interest and other income, net	15,532	11,326
Interest expense	(5,198)	(5,702)
Gain on strategic investments	732	7,496
<b>Income before income taxes</b>	<b>151,744</b>	<b>146,176</b>
Provision for income taxes	47,042	46,128
<b>Net income</b>	<b>\$ 104,702</b>	<b>\$ 100,048</b>
Net income per share:		
Basic	\$ 0.25	\$ 0.23
Diluted	\$ 0.24	\$ 0.22

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Number of shares used in computing per share amounts	basic	425,809	430,714
Number of shares used in computing per share amounts	diluted	433,119	444,921

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(1) Amortization of stock-based compensation consists of:

Services	\$	401	\$	237
Selling and marketing		1,396		2,881
Research and development		1,331		1,222
General and administrative		60		744
Total amortization of stock-based compensation	\$	3,188	\$	5,084

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**VERITAS SOFTWARE CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in thousands)

	<b>March 31, 2005 (Unaudited)</b>	<b>December 31, 2004</b>
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 633,721	\$ 700,108
Short-term investments	1,788,000	1,853,092
Accounts receivable, net	259,794	393,897
Other current assets	97,189	103,917
Deferred income taxes	44,151	44,311
<b>Total current assets</b>	<b>2,822,855</b>	<b>3,095,325</b>
Property and equipment, net	575,258	585,243
Other intangibles, net	139,640	153,373
Goodwill, net	1,949,639	1,953,432
Other non-current assets	22,619	24,375
Deferred income taxes	76,791	76,811
	<b>\$ 5,586,802</b>	<b>\$ 5,888,559</b>
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 27,270	\$ 38,440
Accrued compensation and benefits	114,836	152,443
Accrued acquisition and restructuring costs	16,704	18,203
Other accrued liabilities	81,121	102,118
Current portion of long-term debt		380,630
Income taxes payable	164,306	126,873
Deferred revenue	547,063	547,853
<b>Total current liabilities</b>	<b>951,300</b>	<b>1,366,560</b>
Convertible subordinated notes	520,000	520,000
Accrued acquisition and restructuring costs	44,387	47,877
Other long-term liabilities	27,269	30,431
<b>Total liabilities</b>	<b>1,542,956</b>	<b>1,964,868</b>
<b>Stockholders equity</b>	<b>4,043,846</b>	<b>3,923,691</b>

\$ 5,586,802    \$ 5,888,559

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**VERITAS SOFTWARE CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	<b>Three Months Ended</b>	
	<b>March 31,</b>	
	<b>2005</b>	<b>2004</b>
	<b>(Unaudited)</b>	
<b>Cash flows from operating activities:</b>		
Net income	\$ 104,702	\$ 100,048
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	30,075	30,075
Amortization of developed technology	7,424	3,824
Amortization of other intangibles	2,430	2,394
In-process research and development		400
Provision for (recovery of) allowance for doubtful accounts	(454)	518
Stock-based compensation	3,188	5,084
Tax benefits from stock plans	5,263	6,816
Gain on strategic investments	(732)	(7,496)
Loss on sale and disposal of assets		1,083
Deferred income taxes	12	(8,320)
Changes in operating assets and liabilities, net of effects of business acquisitions:		
Accounts receivable	128,332	93,328
Other assets	7,857	(8,236)
Accounts payable	(10,955)	(9,252)
Accrued compensation and benefits	(36,169)	(36,641)
Accrued acquisition and restructuring costs	(4,461)	(7,479)
Other liabilities	(23,447)	(14,696)
Income taxes payable	37,546	39,959
Deferred revenue	6,249	25,652
Net cash provided by operating activities	256,860	217,061
<b>Cash flows from investing activities:</b>		
Purchases of investments	(360,110)	(962,140)
Sales and maturities of investments	414,214	598,515
Purchases of property and equipment	(19,054)	(28,081)
Purchases of businesses and technology, net of cash acquired	(528)	(60,449)
Net cash provided by (used for) investing activities	34,522	(452,155)
<b>Cash flows from financing activities:</b>		
Repayment of long-term debt	(380,630)	
Proceeds from issuance of common stock	39,485	43,353
Net cash (used for) provided by financing activities	(341,145)	43,353
Effect of exchange rate changes on cash and cash equivalents	(16,624)	(3,036)

Net decrease in cash and cash equivalents	(66,387)	(194,777)
Cash and cash equivalents at beginning of period	700,108	823,171
Cash and cash equivalents at end of period	\$ 633,721	\$ 628,394

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Exhibit 99.02

**VERITAS SOFTWARE CORPORATION**  
**RECONCILIATION OF CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**TO THE NON-GAAP STATEMENTS OF OPERATIONS**  
(in thousands, except per share data)  
(Unaudited)

	Three Months Ended March 31, 2005			Three Months Ended March 31, 2004		
	Under GAAP	Adjustments	Non-GAAP	Under GAAP	Adjustments	Non-GAAP
<b>Net revenue:</b>						
User license fees	\$ 323,242		\$ 323,242	\$ 302,409		\$ 302,409
Services	236,016		236,016	183,338		183,338
<b>Total net revenue</b>	<b>559,258</b>		<b>559,258</b>	<b>485,747</b>		<b>485,747</b>
<b>Cost of revenue:</b>						
User license fees	8,612		8,612	9,519		9,519
Services (1)	79,045	(401)	A 78,644	65,843	(237)	A 65,606
Amortization of developed technology (1)	7,424	(7,424)	B	3,824	(3,824)	B
<b>Total cost of revenue (2)</b>	<b>95,081</b>	<b>(7,825)</b>	<b>87,256</b>	<b>79,186</b>	<b>(4,061)</b>	<b>75,125</b>
<b>Gross profit (2)</b>	<b>464,177</b>	<b>7,825</b>	<b>472,002</b>	<b>406,561</b>	<b>4,061</b>	<b>410,622</b>
<b>Gross profit % (2)</b>	<b>83.0%</b>	<b>1.4%</b>	<b>84.4%</b>	<b>83.7%</b>	<b>0.8%</b>	<b>84.5%</b>
<b>Operating expenses:</b>						
Selling and marketing (1)	165,652	(1,396)	A 164,256	143,038	(2,881)	A 140,157
Research and development (1)	97,510	(1,331)	A 96,179	79,924	(1,222)	A 78,702
General and administrative (1)	57,907	(60)	A 57,847	47,749	(744)	A 47,005
Amortization of other intangibles (1)	2,430	(2,430)	B	2,394	(2,394)	B
In-process research and development (1)				400	(400)	B
<b>Total operating expenses (2)</b>	<b>323,499</b>	<b>(5,217)</b>	<b>318,282</b>	<b>273,505</b>	<b>(7,641)</b>	<b>265,864</b>
Income from operations (2)	140,678	13,042	153,720	133,056	11,702	144,758

<b>Operating margin %</b>							
(2)	<b>25.2%</b>	<b>2.3%</b>		<b>27.5%</b>	<b>27.4%</b>	<b>2.4%</b>	<b>29.8%</b>
Interest and other income, net	15,532			15,532	11,326		11,326
Interest expense	(5,198)			(5,198)	(5,702)		(5,702)
Gain on strategic investments (1)	732	(732)	<b>C</b>		7,496	(7,496)	<b>C</b>
Income before income taxes (2)	151,744	12,310		164,054	146,176	4,206	150,382
Provision for income taxes (1)	47,042	3,815	<b>D</b>	50,857	46,128	1,994	<b>D</b> 48,122
<b>Net income (2)</b>	<b>\$ 104,702</b>	<b>\$ 8,495</b>		<b>\$ 113,197</b>	<b>\$ 100,048</b>	<b>\$ 2,212</b>	<b>\$ 102,260</b>
Net income per share:							
Basic (2)	\$ 0.25	\$ 0.02		\$ 0.27	\$ 0.23	\$ 0.01	\$ 0.24
Diluted (2)	\$ 0.24	\$ 0.02		\$ 0.26	\$ 0.22	\$ 0.01	\$ 0.23
Number of shares used in computing per share amounts basic							
	425,809			425,809	430,714		430,714
Number of shares used in computing per share amounts diluted							
	433,119			433,119	444,921		444,921

The non-GAAP financial measures provided herein exclude the impact of non-cash charges related to acquisitions, such as the amortization of developed technology, amortization of intangibles, in-process research and development and stock-based compensation expense and the impact of other special items, such as other stock-based compensation expense, gain on strategic investments and related adjustments to provision for income taxes, on our operating results. These non-GAAP financial measures are not prepared in accordance with generally accepted accounting principles and may be different from non-GAAP financial measures used by other companies. Non-GAAP financial measures should not be considered a substitute for, or superior to, measures of financial performance prepared in accordance with GAAP.

**Footnotes:**

- A** To exclude stock-based compensation expense.
- B** To exclude non-cash charges of amortization of intangibles and in-process research and development related to acquisitions.
- C** To exclude gain on strategic investments.

- D** To adjust the provision for income taxes to reflect the effect of non-GAAP adjustments on net income.
- 1** The Company includes these non-GAAP financial measures because it believes they are useful measures to investors in allowing for greater transparency to certain line items in the Company's financial statements. The Company has historically reported similar non-GAAP financial measures to its investors and believes that the inclusion of comparative numbers provides consistency in its financial reporting. Investors are encouraged to review the reconciliation of the non-GAAP financial measures to their most directly comparable GAAP financial measures as provided herein.
- 2** The Company's management refers to these non-GAAP financial measures, such as non-GAAP operating margins and net income, in making operating decisions because they provide meaningful supplemental information regarding the Company's operational performance and its ability to invest in research and development and fund acquisitions and capital expenditures. In addition, these non-GAAP financial measures facilitate management's internal comparisons to the Company's historical operating results and comparisons to competitors' operating results. Investors are encouraged to review the reconciliation of the non-GAAP financial measures to their most directly comparable GAAP financial measures as provided herein.